

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

HUTCHINS BBQ, LLC, HUTCHINS BBQ
CATERING CO., LLC, AND TIMOTHY M.
HUTCHINS,

Plaintiffs,

V.

WESLEY HUTCHINS AND ROY
HUTCHINS,

Defendants.

Civil Action No. _____

DECLARATION OF TIMOTHY HUTCHINS

1. My name is Timothy Hutchins. I am a plaintiff in the above styled and captioned matter. I am of competent age and sound mind to make this Declaration. The statements made herein are based on my own personal knowledge.

2. Throughout the 1990s and early 2000s, different members of my family (the Hutchins family) have operated a number of different barbeque restaurants under several different names. I, however, have consistently operated under the Hutchins Barbeque name.

3. By 2003 or 2004, my McKinney restaurant location was the only Hutchins Barbeque restaurant in existence. The other locations were, by that point, being operated primarily by Roy, Wesley and Tracy Hutchins under the name "Randy White's Hall of Fame Barbeque."

4. At some point during 2002, the Hutchins Barbeque business was transferred into my name after having accrued some significant debts under the management of Defendants Roy and Wesley Hutchins. In particular, the business owed roughly \$150,000 in delinquent, unpaid sales taxes owed to the Texas Comptroller, for which I became personally responsible.

5. Following that transition, Defendant Roy Hutchins attempted to persuade me to abandon the Hutchins Barbeque name and instead, to rebrand my restaurant under the “Randy White’s Hall of Fame Barbeque” concept. Despite his urging, I have never varied from the Hutchins Barbeque name, which has been continually in use by me and Hutchins BBQ since at least 2002.

6. In or around 2005, Roy Hutchins opened a “Randy White’s” location in Addison, TX. That restaurant, however, was unsuccessful and closed after only a few years. At that point Roy Hutchins effectively retired.

7. In or around late 2008, Defendant Roy Hutchins sought to arrange for a new barbeque restaurant to be opened in Mesquite, TX under the “Randy White’s” name, so that

Wesley Hutchins (who had just recently been released from prison) would have a business to operate.

8. While I was not involved in the Randy White's operations at that time, Tracy Hutchins—who operated the only other Randy White's restaurant at the time—opposed the idea. Tracy indicated his concern that Wesley's restaurant would fail and thus damage the reputation of Tracy's Randy White's restaurant. Nonetheless, Roy procured the financing to help Wesley open a new Randy White's in Mesquite, Texas.

9. Around this time, I had decided to focus more on my restaurant's barbeque, with the goal of becoming more competitive within the barbeque market. I began paying more attention to Hutchins BBQ's competition and to the general trends in the barbeque industry, as a whole.

10. In 2009, I began touring other barbeque restaurants throughout the state, particularly in Austin and Houston. Along the way, I became acquainted with several other prominent barbeque restaurant operators and had the opportunity to see and learn from their various different approaches to barbeque.

11. As a result of all that I learned from my barbeque "tours", I made substantial changes to the Hutchins BBQ menu around 2011, namely by bringing in higher quality beef, trimming it more thoroughly, and changing the seasoning process. When I was implementing these changes, Defendant Roy Hutchins would criticize my approach and tell me that I was "crazy" to be doing those things.

12. Eventually, I changed meat suppliers and revamped our entire range of vegetable recipes. Throughout this process, Roy Hutchins dismissed my efforts and would tell me how "dumb" my changes were.

13. Defendant Wesley Hutchins, meanwhile, had once again proven himself incapable of successfully operating a barbeque restaurant—just as Tracy Hutchins had feared. In fact, in or around 2012, Wesley's former business partners brought legal action against him for various misdeeds in connection with the restaurant, ultimately resulting in Wesley's agreement that he would no longer have any "interest in, or [be] a member of, or have any connection whatsoever in and to" the restaurant.

14. Shortly thereafter, in June 2013, my menu changes were recognized when Hutchins BBQ was named one of "The 50 Best BBQ Joints ... in the World!" by Texas Monthly. Since then, Hutchins BBQ has continued to build on that success; earning itself a constantly growing reputation as a frontrunner within the barbeque industry and winning awards and accolades.

15. I have learned that the Defendants are undertaking efforts to launch a competing barbeque restaurant that is based on Hutchins BBQ's good name and reputation.

16. For example, on or about November 4, 2022, one of Hutchins BBQ's longstanding vendors, Mr. Wilo of D Sign by Wilo, came into Hutchins Barbeque and congratulated me on the "new store." Given that Hutchins BBQ does not currently have a new store, I asked him what he meant. He then explained that he'd received a signage order from Defendants which he assumed was for Hutchins BBQ based upon the nearly identical nature of the signs ordered by Defendants to those used by Hutchins BBQ.

17. I have received a similar “congratulations” on the “new store” by at least one other vendor to date, namely Performance Food Group, who was also under the misimpression that the Defendants’ infringing barbeque venture was a part of the legitimate Hutchins BBQ.

18. Additionally, I have learned via an online news article that the Defendants have selected a location in Trophy Club, TX for their contemplated barbeque restaurant and have filed an architectural barriers project detail form with the Texas Department of Licensing and Regulation, indicating that they will begin renovations on January 16, 2023.

19. The article’s author, however, was likewise fooled by the Defendants into believing that their contemplated infringing Trophy Club restaurant is actually a new location of the legitimate Hutchins BBQ. Specifically, the article was titled “Hutchins BBQ Adding Trophy Club Spot,” and discussed within the body of the article the two existing Hutchins BBQ locations.

20. Already, it appears that at least one consumer has further been misled by the Defendants, as reflected by her discussion in a Yelp review of the fact that Hutchins BBQ will soon have a new location.

21. Perhaps even more concerning, I was contacted as recently as January 7-8, 2023 by a respected colleague, Brandon Hurtado of Hurtado BBQ, who was concerned about someone having approached his general manager about leaving Hurtado and coming to work for the “new Hutchins BBQ” instead. Once again, Defendants’ misconduct has caused actual confusion—this time among my colleague—who not only believed that the Defendants’ restaurant was associated with the legitimate Hutchins BBQ, but even worse that the disrespectful conduct of attempting to “poach” his general manager was associated with the legitimate Hutchins BBQ.

22. I believe that this confusion will continue to spread if the Defendants are permitted to continue their improper actions.

23. Prior to the Defendants’ recent conduct, to my knowledge Hutchins BBQ has been the exclusive user of the Hutchins Barbeque name and trademarks since at least 2002, at which time the Hutchins Barbeque restaurant business, along with all of its assets and liabilities, were transferred to me.

24. Neither I nor Hutchins BBQ have any affiliation with the restaurant the Defendants are attempting to open. We have not given the Defendants’ permission to use any of our intellectual property and do not consent to their use of our intellectual property.

25. Pursuant to 28 U.S.C. § 1746, I hereby declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge.

Signed:



Timothy Hutchins

Date: January 12, 2023